



United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

Replaced by FmHA AN No. 3085 (1995-A) dated 3-13-97

FmHA AN No. 3085 (1955-A)
November 29, 1994

SUBJECT: Liquidation Process

TO: Acting State Directors and District Directors

ATTENTION: Multi-Family Chiefs and Multi-Family
Coordinators, RECD

PURPOSE:

This Administrative Notice (AN) is issued to clarify the foreclosure process for Multi-Family Housing (MFH) loans. It provides guidance in management and appraisal of these properties during the foreclosure and voluntary conveyance process, determining acceptable bids at the foreclosure sale and management and resale of inventory properties.

COMPARISON WITH PREVIOUS AN's:

There are no previous AN's outlining the step by step process in processing a foreclosure action through to resale of inventory property.

BACKGROUND:

FmHA Instruction 1944-E provides guidance in processing MFH loans. FmHA Instruction 1965-B provides guidance in servicing accounts in default up to the submittal of the problem case report to the State Director. FmHA Instruction 1965-E provides guidance in applicable restrictive use requirements for MFH loans when the accounts are accelerated. FmHA Instructions 1955-A, 1955-B and 1955-C provide guidance in liquidation of MFH properties, management of inventory properties and resale of inventory properties. FmHA Instruction 1956-B provides guidance on debt settlement for housing loans.

This AN consolidates the applicable processes from the above FmHA Instructions into a step-by-step outline for State and servicing offices to use in processing these actions.

EXPIRATION DATE: November 30, 1995 FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1955-A



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Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

IMPLEMENTATION:

We are providing the following guidance and clarification on these issues for use in future liquidation processing:

1. Requesting a court appointed receiver should be considered when the property is forwarded to the Office of General the Counsel (OGC) with a recommendation to initiate foreclosure action. Receivers should be considered in all cases where the health and safety of the tenants is in jeopardy, the physical condition of the property has deteriorated to the point that the Government is undersecured, government funds including subsidies have been misappropriated, or there are findings of Civil Rights and/or Fair Housing violations.

Appointment of a receiver would allow Farmers Home Administration (FmHA) to pay critical operating expenses (water, sewer, trash, electricity, management fees or correct health and safety violations) as protective advances while in the foreclosure process. Protective advances become part of the debt and can be collected back through the proceeds of the foreclosure sale or debt settled if the appraised value of the property is less than the debt.

Interest credit should be canceled and rental assistance suspended as per FmHA Instruction 1965-B, 1965.85 (e) when the case is forwarded to OGC with a recommendation to continue foreclosure action.

2. Projects will be appraised in an "as is" condition for the foreclosure sale as conventional unsubsidized properties with whatever restrictive use provisions are applicable. The restrictive use requirements may significantly impact the value of the property because the restricted rents may lower the potential income to the project.

When a property is offered back to the government through voluntary conveyance, it should be carefully inspected for health and safety violations, structural and/or economic obsolescence, environmental factors and impact on tenants. An analysis should be completed to ensure that the government lien has value before approving the voluntary conveyance. Loans may be debt settled in accordance with FmHA Instruction 1956-B if liens are judged to be valueless.

Projects offered back to the government through voluntary conveyance will be appraised "as is" as either program or non-program properties as appropriate with whatever restrictive use provisions are applicable. Program properties will be appraised valuing the subsidy as any other property remaining in the program.

Appraisers should be aware of any redemption rights required under state law as these redemption rights may have impact on value.

3. Restrictive use provisions as outlined in FmHA Instruction 1965-E, Exhibit A-3, Exhibit G-1 will be attached to the property on a case-by-case basis as follows:

a. Loans obligated on or before December 21, 1979, will not have restrictive use provisions unless:

(1.) The borrower has initiated a request to prepay within the preceding 12 months prior to the foreclosure sale, or

(2.) Servicing actions have been taken which have made the loan previously subject to restrictive use clauses.

b. Loans obligated between December 22, 1979, through December 14, 1989, will be sold with restrictive use for the balance of the 20 years from the date of loan approval.

c. Loans obligated on or after December 15, 1989, will be sold with restrictive use for the balance of the 50-year term from the date of the loan approval.

Any restrictive use provisions to be legally attached to the property to be sold and which will be recorded with the deed release must be advertised with all legal notices of sale to ensure that prospective bidders have constructive notice of these restrictive use provisions, including the Restrictive Use Agreement, Exhibit G-1 to FmHA Instruction 1965-E.

4. Letters should be sent out to tenants 60 days prior to the scheduled foreclosure sale or debt settlement, notifying them that they may request Letters of Priority Entitlement (LOPE letters) for occupancy in other FmHA financed projects. Rental Assistance may be transferred with the tenants if authorized as per FmHA Instruction 1965-E, 1965.215 (e)(3).

5. All bids tendered at the foreclosure sale must be valid. Bids cannot be contingent upon receiving FmHA financing because there is no priority for refinancing a 515 loan. Funding would be subject to the rating and ranking process. Most states could not issue an AD 622 and provide the balance of the bid within 30 days as they already have issued AD 622's for 150 percent of their current year's allocation.

The successful bidder must submit the balance of the offer (less the 10 percent down) within the 30-day period. If the balance of the bid is not submitted within the 30-day

period, the 10 percent down will be forfeited to FmHA. The project will either be awarded to the next highest bidder or be resold at a second foreclosure sale.

6. FmHA should request that the court continue with the court appointed receiver during the 30-day period the successful bidder has to submit the balance of the bid to avoid any liability to FmHA unless FmHA is the successful bidder. Under no circumstances should FmHA take possession of the property unless it is the successful bidder.

7. If the successful bidder pays more than the outstanding debt, the difference should be remitted to the former borrower.

8. If FmHA is the successful bidder, interim management should be approved and an inventory sale should be pursued as soon as possible. An inventory sale and any necessary subsequent loan for repairs have priority for available funds. The point system does not apply to properties sold through inventory sales.


States may request matching funds from the National Office for half of the amount needed to obligate the inventory sale and will be able to conserve their 515 allocation by this method. Non-program properties will have to be financed through sources outside the agency.

9. During the period the property is held as government inventory property, FmHA may pay deficiencies in critical operating and maintenance expenses not covered by project income as non-recoverable cost items.

10. If the project is sold out of government inventory as a program property, another appraisal will need to be done. This appraisal will value the project "as is" as a program property valuing the subsidy in all three approaches. If a subsequent loan is needed for repairs, an additional appraisal, "as improved," must be completed taking into consideration the required repairs as well as valuing the subsidy.

11. If the property is sold out of the program at the foreclosure sale with restrictive use requirements, FmHA must monitor these restrictive use requirements as per FmHA Instruction 1965-E, 1965.222 and as outlined in the restrictive use agreement in FmHA Instruction 1965-E, Exhibit G-1.

If you have any questions concerning these issues or the foreclosure/inventory property/inventory sale process, please call MaryAnne Gallaway, MFHSPM Division, at (202) 690-0759.



MICHAEL V. DUNN
Acting Administrator
Rural Housing and Community
Development Service

Sent by Electronic Mail on 12/2/94 at 12:01 pm by GSS. The State Director should advise other personnel as appropriate.